

E-FILED ON 3/2/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICROSOFT CORPORATION,

No. C03-05424 JF (HRL)

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION TO STRIKE DEFENDANTS'
MOTION TO COMPEL AND TO
VACATE HEARING DATE**

SUNCREST ENTERPRISE and YI-LING
CHEN a/k/a EILEEN CHEN,

[Re: Docket No. 115]

Defendants.

On February 21, 2006, defendants Suncrest Enterprise and Yi-Ling Chen filed a motion to compel a further Fed.R.Civ. P. 30(b)(6) deposition of plaintiff Microsoft and purported to notice that motion for a March 28, 2006 hearing.

Presently before this court is plaintiff's motion to strike defendants' motion to compel as untimely and to vacate the March 28, 2006 hearing. Defendants oppose the motion.¹ Having considered the papers filed by the parties, the court GRANTS plaintiff's motion to strike.

Pursuant to the case management schedule set by the District Court, discovery (fact and expert) closed on November 14, 2005. Accordingly, the last day to move to compel discovery

¹ Plaintiff's motion was filed on February 23, 2006 pursuant to Civil Local Rule 7-11 which governs "miscellaneous administrative matters." The record indicates that the motion papers were electronically served and hand delivered to defendants that same day; and, under Civil Local Rule 7-11, defendants' opposition was to have been filed by February 28, 2006. *See* Civ. L.R. 7-11(b); FED.R.CIV.P. 6(a). Plaintiff argues that defendants' opposition was too late because it was not filed until March 1, 2006. Nevertheless, this court is not convinced that the instant motion presents a "miscellaneous administrative matter," and it has accepted and considered defendants' opposition.

1 was November 23, 2005, and defendants' February 21, 2006 motion to compel is untimely. See
2 Civ. L. R. 26-2 ("Where the Court has set a single discovery cut-off for both fact and expert
3 discovery, no motions to compel discovery may be filed more than 7 court days after the
4 discovery cut-off.").

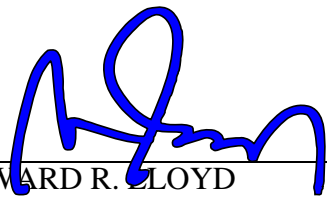
5 Defendants argue that Civil Local Rule 26-2 requires discovery motions to be filed
6 within seven days of the discovery cutoff "unless otherwise ordered." *See* Civ. L.R. 26-2. They
7 point out that the District Court recently granted the parties' stipulated request to extend the
8 "Motion Hearing Cut-off" to March 31, 2006. Defendants contend that this March 31, 2006
9 deadline applies to *all* motions, including motions to compel discovery. However, over the last
10 six months, the parties filed several stipulations to extend certain case management deadlines –
11 an initial stipulation followed by two requests asking for a further extension of those deadlines.
12 While it is true that the parties' last two stipulations refer only to a "Motion Hearing Cut-off,"
13 the parties' first stipulation shows that they considered this deadline to be a "Dispositive
14 Motion Hearing Cut-off." (*See* Docket Nos. 46, 92, 111).

15 In any event, the record presented indicates that defendants deposed Microsoft on
16 November 10, 2005, and that defense counsel was well aware several months ago of the
17 deadline for filing discovery motions. (*See* Dugdale Decl., Ex. A). The time for moving to
18 compel discovery has long since passed, both parties have filed summary judgment motions
19 which are set to be heard by the District Court on March 31, 2006, and defendants have not
20 justified their failure to timely move to compel.

21 Based on the foregoing, plaintiff's motion to strike defendants' untimely motion to
22 compel is GRANTED, and the March 28, 2006 hearing is VACATED.

23 IT IS SO ORDERED.

24 Dated: March 2, 2006

25 
26 _____
27 HOWARD R. LOYD
28 UNITED STATES MAGISTRATE JUDGE

5:03-cv-5424 Notice will be electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.